APPENDIX A

Ruling of the Trial Court

THE COURT: The Court concludes on the basis of the testimony before it, and confining its ruling, of course, to the testimony and the exhibits which are actually in evidence, that the plaintiff has not made a case against the bank. I don't think under the circumstances of this case that the defendant, American Security & Trust Company, is liable. I have no views as to the question of liability as between Kahn Engineering Company and the third party defendants, but since they are not defendants in the present action, the Court's granting of the defendant American Security & Trust Company's motion for a directed verdict disposes of the entire case.

I repeat, I express no views as to the existence of any liability as between the plaintiff and the third party defendants, but I am convinced upon the basis of the testimony before me that there is no liability on the part of the bank under the peculiar circumstances of this case, and giving recognition to the fact that the defendant bank was not the bank upon whom the check was drawn, nor was it the bank in which the corporate account of the plaintiff was maintained. I believe under all of these qualifying circumstances in this case that the Court is required to grant the motion for directed verdict for the American Security & Trust Company.

APPENDIX B

Filed December 11, 1958

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,394

KAHN ENGINEERING CO., INC., APPELLANT

v.

AMERICAN SECURITY & TRUST COMPANY,
a banking corporation, APPELLEE

Appeal from the United States District Court
for the District of Columbia

Decided December 11, 1958

Mr. Carl W. Berueffy for appellant.

Mr. J. Roy Thompson, Jr., with whom *Mr. Bernard J. Gallagher* was on the brief, for appellee.

Before WILBUR K. MILLER, BAZELON and BURGER, Circuit Judges.

PER CURIAM: Kahn Engineering Co., Inc., sued American Security and Trust Company to recover $23,069.41, alleging the bank accepted for deposit by another, and collected the proceeds of, a check for that sum payable to it but bearing an unauthorized endorsement. The check was endorsed as follows:

> "Kahn Engineering Co.
> L. Ray Troxell, Jr.
> President
> Deposit to account of
> Academy Construction, Inc."

The American Security and Trust Company brought in a number of third-party defendants, including the endorser of the check and one Herbert L. Bright, at whose direction the endorsement had been made.

Among several defenses, the answer of the third-party defendants contained the following:

> "Third party defendants further aver that plaintiff has no interest in this action in that, on to-wit, September 3, 1954, subsequent to the negotiation of the check herein in issue, plaintiff assigned all of its right, title and interest in and to any indebtedness due it by Academy Construction, Inc., (Kahn Engineering Co. of Md., Inc., and/or Herbert Lawrence Bright Co., Inc.,) unto third party defendant, Herbert Lawrence Bright, which assignment included of necessity any claim for indebtedness upon the check herein."

A written assignment of that nature was filed as an exhibit.

Even assuming that the above assignment was ineffective as to the subject matter of this litigation, plaintiff failed to make out a prima facie case that it was the named payee of the check in question. There was no evidence whatsoever as to the actual intent of the maker, and it could reasonably be inferred from the record that plaintiff was not the named payee. Plaintiff thus failed to produce any evidence on a critical point of its case.

At the conclusion of plaintiff's evidence, the trial judge directed a verdict for the defendant. Kahn Engineering Co. appeals. We find no error.

Affirmed.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Judgment

THIS CAUSE came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

ON CONSIDERATION WHEREOF It is ordered and adjudged by this Court that the judgment of the District Court appealed from in this cause be, and it is hereby, affirmed.

It is further ORDERED by the Court that appellee herein recover from appellant its taxable costs on this appeal and have execution therefor.

Per curiam.

Dated: December 11, 1958.

APPENDIX D

Statutes Involved

Statutes relevant in the consideration of this case include Uniform Negotiable Instruments Law, Title 28, D.C. Code (1951 edition), Act of March 3, 1901, 31 Stat. 1395 *et seq.*, ch. 854:

§ 101. *Definitions—Sundays and holidays—Application of the law merchant.* In chapters 1-10 of this title unless the context otherwise requires—

* * * *

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

§ 109. *Instrument payable to order.* The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

First. A payee who is not maker, drawer, or drawee, or

Second. The drawer or maker; or

Third. The drawee; or

Fourth. Two or more payees jointly; or,

Fifth. One or some of several payees; or

Sixth. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

§ 110. *Instrument payable to bearer.* The instrument is payable to bearer—

First. When it is expressed to be so payable; or

Second. When it is payable to a person named therein or bearer; or

Third. When it is payable to the order of a fictitious or non-existing person and such fact was known to the person making it so payable; or

Fourth. When the name of the payee does not purport to be the name of any person; or

Fifth. When the only or last indorsement is an indorsement in blank.

§ 122. *Signature by procuration.* A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

§ 124. *Signature forged or without authority.* Where a signature is forged or made without the authority of the person whose signature it purports to be it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment

thereof, against any party thereto can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

§ 301. *Definition—Bearer instrument—Order Instrument.* An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder, completed by delivery.

Uniform Fiduciaries Act, Title 28 D. C. Code (1951 edition), Act of May 14, 1928, 45 Stat. 509, ch. 545:

§ 2301. *Definitions.* The following provisions concerning liability for participation in breaches of fiduciary obligations, and to make uniform the law with reference thereto, shall be in force in the District of Columbia, namely:

(1) In this chapter, unless the context or subject matter otherwise requires:

* * *

"Fiduciary" includes a trustee under any trust, express, implied or resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

* * *

§ 2304. *Transfer of negotiable instruments by fiduciary.* If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his prin-

cipal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as a fiduciary in transferring the instrument.